



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Propulsion Controls Engineering--Request for  
Declaration of Entitlement to Costs

**File:** B-244619.2

**Date:** March 25, 1992

Morley J. Clapp and John P. Reilly for the protester, Catherine M. Evans, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Protester is not entitled to the costs of filing and pursuing its protest where, in response to protest challenging equipment specifications, agency promptly initiated an investigation, discovered that specifications were obsolete, and canceled solicitation 4 days after the agency report on the protest was due to be filed.
2. General Accounting Office Bid Protest Regulations do not provide for award of bid preparation cost in cases where agency has taken corrective action.

### DECISION

Propulsion Controls Engineering (PCE) requests that we find it entitled to reimbursement of its bid preparation costs and protest costs under invitation for bids (IFB) No. N62474-91-B-0011, issued by the Department of the Navy for boiler plant repairs. PCE believes it is entitled to reimbursement of its costs because the Navy unduly delayed in taking corrective action in response to PCE's concerns about the solicitation.

We deny the request.

The IFB, issued on May 14, 1991, contained a specification for an analog-type combustion control system. Although the specification did not identify any particular manufacturer or model, PCE determined that it contemplated the Hays Republic model C-10003 Compact Control Package. Upon contacting Hays to obtain pricing information, PCE learned that model C-10003 was no longer in production, and that the current Hays model, C-10004, is not an analog-type system. In view of the apparent discrepancy between what the Navy's specification called for and what was actually available,

PCE wrote a letter to the agency on May 29 asking if the specification would be changed. The Navy's contract specialist forwarded PCE's inquiry to the engineer in charge (EIC) for review. The EIC apparently contacted the architecture and engineering (A/E) firm that had prepared the specification; the firm indicated that there were several products on the market that met the specifications. The contract specialist subsequently informed PCE that the Navy did not plan to amend the specification.<sup>1</sup> PCE prepared its bid accordingly, and also filed a protest with our Office.

On August 6, 4 days after the Navy's report on the protest was due to be filed, the Navy informed our Office that it was canceling the IFB. We dismissed the protest the following day, as the cancellation rendered it academic. On August 20, PCE filed a request with our Office under section 21.6(e) of our revised Bid Protest Regulations, 56 Fed. Reg. 3759 (1991) (to be codified at 4 C.F.R. § 21.6(e)), for a declaration of entitlement to the costs of filing and pursuing the protest and for its bid preparation costs. PCE alleges that the Navy acted in bad faith by failing to respond to its concerns in a timely manner.

Where an agency takes corrective action prior to our issuing a decision on the merits of a protest, we may declare a protester entitled to "recover reasonable costs of filing and pursuing the protest," 56 Fed. Reg., supra. This regulatory provision is intended to allow the award of costs where agencies unduly delay taking corrective action in the face of a clearly meritorious protest, Oklahoma Indian Corp.--Claim for Costs, 70 Comp. Gen. 558 (1991), 91-1 CPD ¶ 558, thereby causing the protester to expend significant time and resources obtaining relief through the protest process. 55 Fed. Reg. 12836 (1990).

As initially proposed, section 21.6(e) would have permitted an award of costs in cases where the agency notified us of a decision to take correction action after the due date for submission of the agency report on the protest. 55 Fed. Reg. 12838 (1990). While in response to public comments the regulation was revised to provide that the decision whether to award costs should be based on the circumstances of each case, the timing of the corrective action is one of the circumstances we will consider. See id.

The record shows that the Navy did not unduly delay taking corrective action here, and contradicts PCE's allegation of

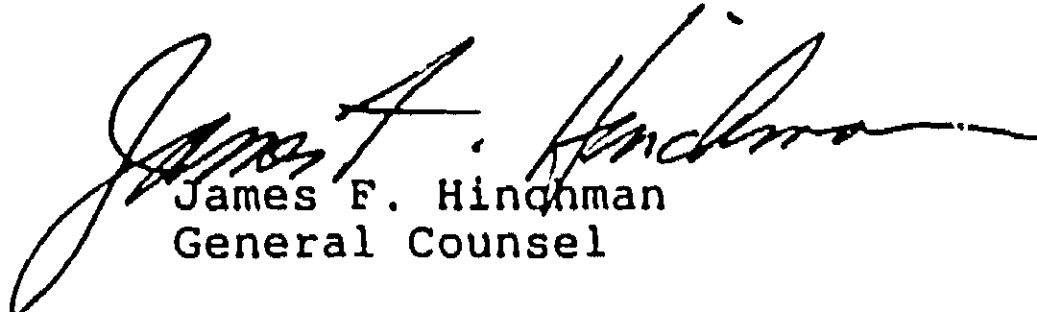
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<sup>1</sup>Although the date PCE received this information is in dispute--PCE asserts that it was June 14, the same day as bid opening, while the Navy maintains that it was June 10--the actual date is not relevant to our decision.

bad faith. The Navy addressed PCE's initial complaint at the agency level immediately after PCE raised the matter by asking the EIC to review the specification; the EIC then consulted with the A/E firm that wrote the specification. Although it now appears that the A/E firm gave the Navy incorrect information, we think the Navy reasonably relied on this professional advice at the time in concluding that it was not necessary to cancel the IFB. Notwithstanding this conclusion, the Navy initiated an additional investigation when PCE filed a protest in our Office. This higher-level review, which included contact with several bidders to find out how they responded to the requirement for an analog control system, revealed that the specified analog system was no longer available. Based on the results of this investigation, the agency canceled the solicitation instead of submitting a response to the protest. We conclude that this constituted prompt corrective action. See Metters Indus., Inc.--Request for Declaration of Entitlement to Costs, B-240391.5, Dec. 12, 1991, 91-2 CPD ¶ 535 (where agency took corrective action 2 days after report due date).

Further, we find that the purpose of section 21.6(e)--to encourage agencies to take corrective action in response to meritorious protests before protesters have expended additional unnecessary time and resources pursuing their claims--was served here. See 55 Fed. Reg., supra. In this regard, PCE has not shown that the agency's delay caused it to expend time and resources that it would not have expended had the agency taken corrective action earlier in the process. The agency never filed a report on the protest to which PCE was required to respond, and there is no indication in the record that PCE took any other action in pursuit of its protest between the time it filed the protest in our Office and the time it learned of the agency's decision to cancel the IFB.

PCE also requests that we find it entitled to recover its bid preparation costs. Protesters are not entitled to reimbursement of bid or proposal preparation costs in cases where agencies take corrective action. See 56 Fed. Reg. 3759, supra; Dynair Elecs., Inc.--Request for Declaration of Entitlement to Costs, B-244290.2, Sept. 18, 1991, 91-2 CPD ¶ 260.

  
James F. Hinchman  
General Counsel